

REMARKS

In the Office Action, the Examiner allowed claims 24-26 if rewritten in independent form including all of the limitations of the base claim and any intervening claims; rejected claims 1, 2, 7-11, 12, and 17-21 under 35 U.S.C. 103(a) as being unpatentable over Civanlar (U.S. Patent No. 5,996,021) in view of Sitaraman (U.S. Patent No. 6,442,165); rejected claims 3-6 and 13-16 under 35 U.S.C. 103(a) as being unpatentable over Civanlar in view of Sitaraman and further in view of Mitra (U.S. Patent No. 6,331,986); and rejected claims 22, 23, 27, and 28 under 35 U.S.C. 103(a) as being unpatentable over Mitra in view of Sitaraman. The rejections are fully traversed below. Reconsideration of the application is respectfully requested based on the following remarks.

Claim 24 has been amended. Accordingly, claims 1-28 remain pending in this application.

ALLOWABLE SUBJECT MATTER

It is respectfully submitted that claim 24 is in condition for allowance since it has been rewritten in independent form including all of the limitations of the base claim and any intervening claims as pointed out by the Examiner. It is also respectfully submitted that claims 25 and 26 are allowable since they depend directly or indirectly from claim 24.

PATENTABILITY OF CLAIMS UNDER 35 U.S.C. 103(a)

The Examiner cited Sitaraman as prior art in supporting the rejections of claims 1-23, 27 and 28 under 35 U.S.C. 103(a). However, the Undersigned respectfully submits that Sitaraman be disqualified as prior art in view of 35 U.S.C. 103(c) or M.P.E.P 2146. Specifically, 35 U.S.C. 103(c) provides: "Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

As applied to 35 U.S.C. 103(c), Sitaraman contains subject matter developed by another person (e.g., Sitaraman et al.). Sitaraman also "only qualifies" as prior art under 35 U.S.C. 102(e) since Sitaraman was filed on December 2, 1998 and the Applicant's application was filed

on December 7, 1999. Further, as evidenced by the Assignee designations in both Sitaraman and Applicant's application, there is common ownership (e.g., Cisco Technology, Inc.) of the subject matter disclosed in Sitaraman and the claimed invention at the time the invention was made. That is, Applicant's application and Sitaraman were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s). Because Sitaraman was used by the Examiner in an obviousness rejection under 35 U.S.C. 103(a), the Undersigned respectfully submits that Sitaraman be disqualified as prior art in accordance to M.P.E.P. 706.02(l)(3) and that claims 1-23, 27 and 28 are in condition for allowance.

As mentioned above, Examiner's rejections of the claims are respectfully traversed. However, to expedite prosecution, all of these claims will not be argued separately at this time. Therefore, the submittal that Sitaraman be disqualified as prior art in view of 35 U.S.C. 103(c) or M.P.E.P. 2146 should not be construed as an admittance on behalf of the Applicant of any obviousness that may be attributed to Sitaraman.

SUMMARY

It is respectfully submitted that all pending claims are allowable and that this case is now in condition for allowance. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

If any fees are due in connection with the filing of this Amendment, the Commissioner is authorized to deduct such fees from the undersigned's Deposit Account No. 50-0388 (Order No. CISC127).

Respectfully submitted,
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

24. (Once Amended) A method [as recited in claim 22]for allocating resource to one or more data streams within a network having a plurality of ingress routers, a plurality of core routers, and a plurality of egress routers, the method comprising:

receiving one or more tickets into a selected core router, the tickets indicating a total load for each one of a plurality of service classes; and

dynamically allocating resources to a plurality of streams within each service class based on the one or more received tickets, wherein the resources are allocated by:

calculating a total controlled resource allocation per class;

calculating a resource remainder; and

allocating the resource remainder to the streams of each class based on the calculated total controlled resource allocation for the each class.